

TITLE 10 OFFICE OF ATTORNEY GENERAL FOR THE STATE

Proposed Rule
LSA Document #17-261

DIGEST

Amends [10 IAC 3-2-1](#) to revise the tort claim notice by providing additional clarity and updating the list of immunities to reflect current statute. Effective 30 days after filing with the Publisher.

[IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses](#)

[10 IAC 3-2-1](#)

SECTION 1. [10 IAC 3-2-1](#) IS AMENDED TO READ AS FOLLOWS:

[10 IAC 3-2-1](#) Tort claims against the state; form

Authority: [IC 34-13-3-6](#)

Affected: [IC 5-15-5.1-5](#); [IC 8-15-2-4](#); [IC 8-15-3-7](#); [IC 8-15.7-2-14](#); [IC 9-13-2-73](#); [IC 11-10-8](#); [IC 11-12](#); [IC 12-23](#); [IC 13-11-2-19.3](#); [IC 14-8-2-185](#); [IC 20-20-40-14](#); [IC 20-33-8-12](#); [IC 34-6-2-38](#); [IC 34-13-3-3](#); [IC 34-13-3-7](#); [IC 35-33-8](#); [IC 35-46-1-15.1](#); [IC 35-46-1-15.3](#); [IC 36-9-28.7](#)

Sec. 1. (a) A claim for personal injury or property damage against the state of Indiana must be:

- (1) filed on the form prescribed in subsection (b); or
- (2) in writing as prescribed under [IC 34-13-3](#) and this rule.

(b) The claim form is as follows:



NOTICE OF TORT CLAIM FOR
PROPERTY DAMAGE AND/OR PERSONAL INJURY
State Form 54668 (3-14) (R / 7-17)
Special Investigations Division

OFFICE OF ATTORNEY GENERAL
ATTN: Tort Claim Investigations
Government Center South, 5th floor
302 W. Washington Street
Indianapolis, IN 46204
Telephone: (317) 232-6350

INSTRUCTIONS: Anyone who has a claim for personal injury or property damage against the State of Indiana must either use this form to file a claim or make the claim in writing as prescribed in ~~Indiana Code~~ [IC 34-13-3](#). Immunities are listed on the back of this form.

1. If applicable, include copies of accident/incident report, vehicle registration, paid receipts for repair or two (2) estimates for repair, medical reports, photographs, and any additional documentation in reference to this matter.
2. Each person who had a loss should file a separate form.
3. Sign and date this form.
4. State statute requires the claim be delivered in person or be sent via Certified or Registered mail to the address in the upper right corner above.
5. Do not delay making your claim. Indiana law gives you two hundred seventy (270) days after the loss to make a claim, and it must comply with ~~Indiana Code~~ [IC 34-13-3](#).
6. Keep a copy of your claim form, receipts, bills, and certified/registered mail receipt.
7. If your claim is properly filed, the Office of the Attorney General will investigate it and will notify you in writing within ninety (90) days of receipt if your claim is approved. A claim is denied if not approved within ninety (90) days.
8. The filing of this claim is part of a legal process. If you have any questions about the right way to file a claim, please contact an attorney of your choice. The state's attorneys are not authorized by law to assist you with filing this claim. For your information, a list of actions, or conditions, resulting in nonliability pursuant to ~~Indiana Code~~ [IC 34-13-3](#) are shown on the back of this form.

Please be advised that this form is not intended for use for claims against political subdivisions, which have some different requirements, including only one hundred eighty (180) days after the loss to make a claim.

CLAIMANT INFORMATION				
Name		Home Telephone	Work Telephone	Cellular Telephone
Address at Time of Loss (number and street, city, state, and ZIP code)		Email Address		
Current Address (if different from above)		Driver License Number		Issuing State
		Vehicle License Plate Number (if involved)		Issuing State
LOSS INFORMATION				
Date of Loss (m/d/yy)	Time of Loss <input type="checkbox"/> AM <input type="checkbox"/> PM	Dollar Amount of Loss	State Agency Involved	State Vehicle Commission (if known)
Exact Location of Loss (include town, street and nearest crossroad)				Loss County
Names/Addresses of All Persons Involved (if known)				
Alleged Negligence				
Explanation of what happened (use additional sheets if necessary)				

Please read: I swear and affirm under the penalties for perjury that the foregoing information is true and correct to the best of my knowledge and belief.

Claimant's Signature

Date (m/d/yy)

Immunity of governmental entity or employee

A governmental entity or an employee acting within the scope of the employee's employment is not liable if a loss results from the following:

- (1) The natural condition of unimproved property.
- (2) The condition of a reservoir, dam, canal, conduit, drain, or similar structure when used by a person for a purpose that is not foreseeable.
- (3) The temporary condition of a public thoroughfare or extreme sport area that results from weather.
- (4) The condition of an unpaved road, trail, or footpath, the purpose of which is to provide access to a recreation or scenic area.
- (5) The design, construction, control, operation, or normal condition of an extreme sport area, if all entrances to the extreme sport area are marked with:
 - (A) a set of rules governing the use of the extreme sport area;
 - (B) a warning concerning the hazards and dangers associated with the use of the extreme sport area; and
 - (C) a statement that the extreme sport area may be used only by persons operating extreme sport equipment.

This subdivision shall not be construed to relieve a governmental entity from liability for the continuing duty to maintain extreme sports areas in a reasonably safe condition.

- (6) The initiation of a judicial or an administrative proceeding.

- (7) The performance of a discretionary function; however, the provision of medical or optical care as provided in [IC 34-6-2-38](#) shall be considered as a ministerial act.

(8) The adoption and enforcement of or failure to adopt or enforce:

(A) a law (including rules and regulations); **or**

(B) in the case of a public school or charter school, a policy;

unless the act of enforcement constitutes false arrest or false imprisonment.

(9) An act or omission performed in good faith and without malice under the apparent authority of a statute which is invalid if the employee would not have been liable had the statute been valid.

(10) The act or omission of anyone other than the governmental entity or the governmental entity's employee.

(11) The issuance, denial, suspension, or revocation of, or failure or refusal to issue, deny, suspend, or revoke any permit, license, certificate, approval, order, or similar authorization, where the authority is discretionary under the law.

(12) Failure to make an inspection, or making an inadequate or negligent inspection, of any property, other than the property of a governmental entity, to determine whether the property complied with or violates any law or contains a hazard to health or safety.

(13) Entry upon any property where the entry is expressly or impliedly authorized by law.

(14) Misrepresentation if unintentional.

(15) Theft by another person of money in the employee's official custody, unless the loss was sustained because of the employee's own negligent or wrongful act or omission.

(16) Injury to the property of a person under the jurisdiction and control of the department of correction if the person has not exhausted the administrative remedies and procedures provided by ~~section 7 of this chapter.~~ [IC 34-13-3-7](#).

(17) Injury to the person or property of a person under supervision of a governmental entity and who is:

(A) on probation; or

(B) assigned to an alcohol and drug services program under [IC 12-23](#), a minimum security release program under [IC 11-10-8](#), a pretrial conditional release program under [IC 35-33-8](#), or a community corrections program under [IC 11-12](#).

(18) Design of a highway (as defined in [IC 9-13-2-73](#)), toll road project (as defined in [IC 8-15-2-4\(4\)](#)), tollway (as defined in [IC 8-15-3-7](#)), or project (as defined in [IC 8-15.7-2-14](#)) if the claimed loss occurs at least twenty

(20) years after the public highway, toll road project, tollway, or project was designed or substantially redesigned; except that this subdivision shall not be construed to relieve a responsible governmental entity from the continuing duty to provide and maintain public highways in a reasonably safe condition.

(19) Development, adoption, implementation, operation, maintenance, or use of an enhanced emergency communication system.

(20) Injury to a student or a student's property by an employee of a school corporation if the employee is acting reasonably under a:

(A) discipline policy adopted under [IC 20-33-8-12](#); **or**

(B) restraint and seclusion plan adopted under [IC 20-20-40-14](#).

(21) An act or omission performed in good faith under the apparent authority of a court order described in [IC 35-46-1-15.1](#) or [IC 35-46-1-15.3](#) that is invalid, including an arrest or imprisonment related to the enforcement of the court order, if the governmental entity or employee would not have been liable had the court order been valid.

(22) An act taken to investigate or remediate hazardous substances, petroleum, or other pollutants associated with a brownfield (as defined in [IC 13-11-2-19.3](#)) unless:

(A) the loss is a result of reckless conduct; or

(B) the governmental entity was responsible for the initial placement of the hazardous substances, petroleum, or other pollutants on the brownfield.

(23) The operation of an off-road vehicle (as defined in [IC 14-8-2-185](#)) by a nongovernmental employee, or by a governmental employee not acting within the scope of the employment of the employee, on a public highway in a county road system outside the corporate limits of a city or town, unless the loss is the result of an act or omission amounting to:

(A) gross negligence;

(B) willful or wanton misconduct; or

(C) intentional misconduct.

This subdivision shall not be construed to relieve a governmental entity from liability for the continuing duty to maintain highways in a reasonably safe condition for the operation of motor vehicles licensed by the bureau of motor vehicles for operation on public highways.

(24) Any act or omission rendered in connection with a request, investigation, assessment, or opinion provided under [IC 36-9-28.7](#).

(Office of Attorney General for the State; [10 IAC 3-2-1](#); filed Jun 16, 2011, 8:51 a.m.:
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